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Chairman: Mr. Yousfi ..... (Algeria)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Mr. Saha

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The meeting was called to order at 10.15 a.m.

Agenda item 151: Financing of the United Nations Integrated Mission in Timor-Leste (A/61/519 and A/61/567)

1. **Mr. Sach** (Controller) introduced the Secretary-General's report on the financing of the United Nations Integrated Mission in Timor-Leste (UNMIT) for the period from 25 August 2006 to 31 March 2007 (A/61/519). Owing to the Mission's recent establishment, the continuing deployment of its personnel and the time required to determine its full resource requirements, review legislative frameworks and prepare results-based frameworks, the full budget for the period from 25 August 2006 to 30 June 2007 would not be submitted to the General Assembly until the first part of its resumed sixty-first session. The report currently before the Committee contained a request for commitment authority, with assessment, for the period from 25 August 2006 to 31 March 2007. The request provided for the deployment of 34 military liaison and staff officers, 1,608 police personnel, 480 international staff, 1,075 national staff and 380 United Nations Volunteers, as well as 22 general temporary assistance positions at United Nations Headquarters.

2. Under the proposal the General Assembly would establish a special account for UNMIT and authorize the Secretary-General to enter into commitments in the amount of $172,528,600, inclusive of the amount of $49,961,500 previously authorized by the Advisory Committee to meet the Mission's immediate start-up requirements. It would also approve assessment in the amount of $145,080,700 for the period from 25 August 2006 to 25 February 2007 and assessment in the amount of $27,447,900, at the monthly rate of $23,876,086, for the period from 26 February to 31 March 2007, subject to the decision of the Security Council to extend the mandate of the Mission.

3. **Mr. Saha** (Chairman of the Advisory Committee on Administrative and Budgetary Questions (ACABQ)), introducing the related report of the Advisory Committee (A/61/567), said that the Advisory Committee had had no alternative but to recommend that the mechanism of commitment authority with assessment should be utilized for UNMIT. However, the use of that mechanism represented a departure from good budget practice and discipline, and was being used too routinely. It had been intended as a bridge mechanism, for the purpose of providing immediate resources required for the start-up of new missions or the expansion of existing ones pending the timely submission of fully detailed and justified budgets.

4. It was hard to understand why the Secretariat could not present a full budget for UNMIT until mid-February 2007, given that the United Nations had been present in the country for over seven years. Moreover, by the time the General Assembly could approve a budget, almost eight months into the Mission's mandate, the Mission's basic structure and resource requirements would have been established de facto without the specific approval of the Assembly. There should be stricter adherence to proper budget procedure, whereby assessments were decided on the basis of appropriations that had been duly approved by the Assembly following consideration of complete and fully justified budget submissions. Any future recourse to the mechanism of commitment authority with assessment must be confined to the limited use for which it was intended.

5. The proposed structure and staffing levels of the Mission should be carefully studied and justified; he cautioned against the application of "one-size-fits-all" models to missions of varying dimensions, scope and components. The Advisory Committee's recommendation was made without prejudice to any recommendation it might make, or any decision that the General Assembly might take, on budgetary and administrative matters relating to the Mission, its staffing table or operational requirements, when the Mission's full budget was submitted at the resumed sixty-first session.

6. The Advisory Committee recommended against the proposal to charge 22 general temporary assistance positions to the Mission's budget. The proposal should be considered in the context of such requests as the Secretary-General might make under the support account, taking into account the existing capacity under the support account, including vacancy rates and general temporary assistance resources.

7. **Ms. Stevens** (Australia), speaking also on behalf of Canada and New Zealand, said that she strongly supported the role of the United Nations in Timor-Leste. The mandate of UNMIT had evolved through extensive consultations between the Timorese Government and international stakeholders, and illustrated the changing and multifaceted nature of

United Nations peace operations. The hybrid nature of the operations of UNMIT should remind Member States of the need to continually refine and adapt their approach to peace operations in order to ensure the most effective and efficient response.

8. The Secretariat should take due note of the Advisory Committee's comments regarding the presentation of the financing request. At the same time, Member States were aware that the Secretariat had faced a heavy workload with respect to peacekeeping operations since mid-2006. She looked forward to receiving the full budget of UNMIT, prepared in accordance with the results-based budgeting framework, and would welcome the Secretariat's views on the Advisory Committee's recommendations for a reduced commitment authority and assessment level, as well as a practical assessment of the operational impact of those recommendations.

9. She agreed with ACABQ that the support account was the appropriate funding source for additional short-term capacity at United Nations Headquarters to support the Mission. If extra assistance was needed due to surge requirements, the Secretary-General should set out the rationale in a comprehensive manner so that any necessary revisions to support account estimates could be considered. She wondered whether the Secretariat found the Advisory Committee's recommendation for the use of support account vacancies and resources to be feasible. She looked forward to receiving more details, during the Committee's informal consultations, concerning personnel deployment schedules, arrangements for the transfer of resources between the United Nations Office in Timor-Leste (UNOTIL) and UNMIT, and the expected areas of cooperation between the Mission, country team partners, bilateral partners and multilateral partners.

10. **Mr. Petranto** (Indonesia) said that his delegation supported the mandate of UNMIT and was particularly pleased with the multidimensional approach adopted to carry out the Mission. However, there were indications that funding from some United Nations agencies, funds and programmes would decline in 2007. Perhaps steps should be taken to address that situation in order to ensure the Mission's success.

11. To treat the cost estimates before the Committee as a budget would be to give validity to the use of commitment authority as a legitimate substitute for a complete and fully justified budget. The use of commitment authority should not become standard practice, especially as ample time had been available to prepare an appropriate submission. Pending the submission of the full budget, Indonesia would welcome any information about adjustments to the Mission's structure proposed by the Secretary-General and their likely impact on the budget.

12. Under Security Council resolution 1704 (2006), one of the main priorities for UNMIT was preparatory work for the 2007 presidential and parliamentary elections in Timor-Leste, but the cost estimates under consideration did not include any provision for electoral activities. The mandate of UNMIT emphasized capacity-building to enable Timor-Leste to become self-reliant and self-sufficient and to promote peace and stability. The achievement of those goals required national reconciliation among the country's leaders, economic development based on human resources development and the mainstreaming of gender perspectives and those of children and youth in the Mission's policies.

13. Indonesia wished to know the intended roles and responsibilities of the consultants mentioned in the Secretary-General's report. The process used to select the consultants must be transparent. Because it was important for Timor-Leste to take ownership of its future, efforts should be made to maximize the involvement of its people in all programmes and activities of UNMIT.

14. **Mr. Traystman** (United States of America) said that his delegation wished to extend its condolences to the families of the Jordanian soldiers fatally injured on 10 November 2006 while serving with the United Nations Stabilization Mission in Haiti (MINUSTAH).

15. The peacekeeping deployment of the United Nations had reached a historic high at the end of October, with nearly 81,000 military and police personnel and some 15,000 civilians serving in peace operations around the world. Accordingly, the Committee must closely scrutinize the proposals concerning UNMIT in order to ensure that the Organization retained sufficient human and financial resources to meet its current and future challenges. Moreover, the Secretariat should take special care to ensure that requests for resources were fully justified.

16. Regrettably, the request before the Committee was not supported by the level of detail that would

have been given in a full budget submission. Considering that the United Nations had been actively engaged in Timor-Leste since 1999, the Secretariat should have been in a position to present a full budget, which would have deepened the Committee's understanding of the proposals. It would have been useful to receive information about country team coordination, particularly about which functions had been transferred to United Nations agencies, funds and programmes and what steps the Mission was taking to minimize overlap or duplication of activities between UNMIT and country team partners.

17. While the United States commended all those involved for their continuing efforts to bring about reconciliation in Timor-Leste, it questioned the need to include resources for 22 general temporary assistance positions in the estimated requirements for operational costs. The request for those positions should take into account the existing capacity of the support account, which had been created to provide backstopping capacity at Headquarters for peacekeeping operations. Such funding should not be included in the Mission's budget at the current stage. If the Committee determined that additional funding was required, that funding should be absorbed from within the current level of the support account. If that could not be done, a revised support account budget should be presented. Since starting up new missions between budget cycles could place a strain on the funding normally provided through the support account, an institutionalized process should be developed for dealing with those needs on an interim and longer-term basis.

18. **Mr. Sena** (Brazil) said that the budget for UNMIT to be submitted to the General Assembly in 2007 must enable the Mission to meet the aspirations of the Timorese people and Government and to carry out the broad range of tasks assigned to it by the Security Council in paragraph 4 of its resolution 1704 (2006), including support for the 2007 presidential and parliamentary electoral process.

19. In view of the time required to prepare the Mission's results-based budgeting frameworks, it was understandable that the full budget would not be submitted to the General Assembly until the first part of its resumed sixty-first session. In the interim, however, there was a need for immediate cash and human and operational resources to support the Mission's establishment and deployment. His delegation therefore supported the Secretary-General's request for commitment authority with assessment, in particular the resources requested for military observers, United Nations police and formed police units, as well as the provision for quick-impact projects focusing primarily on the renovation of basic community infrastructure, the provision of clean drinking water and the rehabilitation of school buildings.

20. His delegation would welcome clarification of the expected impact of the reductions recommended by the Advisory Committee and wished to know why it had recommended against the consideration of backstopping posts in the context of requirements for UNMIT. The resources allocated to the support account had been based on estimates made in February 2006; much had happened since then, including developments in the Middle East. The Secretariat should provide assurances that all necessary support for UNMIT at Headquarters would be guaranteed, as well as information on the expected impact of the Advisory Committee's recommendation that the General Assembly should approve assessment of only 50 per cent of the amount approved for commitment for the periods from 25 August 2006 to 25 February 2007 and from 26 February to 31 March 2007. Brazil fully supported UNMIT, particularly since the current situation on the ground required urgent action.

21. **Mr. Kozaki** (Japan) said his delegation regretted that the General Assembly had no choice but to take action based on a resource request that lacked the proper justification, and fully shared the Advisory Committee's concern about the recent excessive use of commitment authority with assessment. Issues relating to backstopping capacity at United Nations Headquarters should be discussed thoroughly in the context of the support account, not in the context of the proposed commitment authority. Japan fully supported the Advisory Committee's recommendation that existing vacancies and general temporary assistance funding should be used to meet additional surge requirements for the Mission.

22. There was no clear justification for the Mission structure or the number and level of civilian staff, especially at the level of senior management. The Advisory Committee had rightly pointed out that approval of commitment authority, with assessment, at the current time would in no way imply approval of the structure and resource level of the Mission or prejudge future consideration of the budget for UNMIT. His

delegation was not convinced of the need to budget $250,000 for quick-impact projects, given the existing presence in the field of United Nations humanitarian and development agencies. It supported the adjusted assessment level recommended by the Advisory Committee.

23. **Mr. Torres Lépori** (Argentina), associating his delegation with the statement made by the representative of Brazil, said that he fully supported UNMIT and the Secretary-General's request for commitment authority, with assessment, to finance the initial phase. The situation in Timor-Leste was a sad reminder of what happened when the United Nations left a country too soon, and UNMIT could provide valuable lessons, particularly for missions already under way. All necessary resources should be provided for quick-impact projects, which were extremely useful for winning the support of the local population and improving their quality of life. As for the many questions asked with regard to the report of ACABQ (A/61/567), his delegation would be following the discussions closely during informal consultations.

24. **Ms. Udo** (Nigeria), speaking on behalf of the African Group, said that each mission's requirements should be tailored to address its unique characteristics so that it could fully accomplish its mandate. The African Group trusted that the full budget for UNMIT, to be presented to the General Assembly in early 2007, would include results-based frameworks, address the Mission's needs and meet the expectations of the General Assembly.

25. The comments made by the representative of Brazil were very pertinent. The African Group would appreciate receiving the requested clarifications during informal consultations.

26. **Ms. Pataca** (Angola), associating her delegation with the statement made by the representative of Brazil, said that her delegation would appreciate it if ACABQ could respond to the question raised by that representative concerning the impact of the recommended budget reductions.

27. **Mr. Sach** (Controller) said that he had noted some Member States' discomfort with the increasing tendency to submit commitment authority requests, as opposed to full budgets, in response to action by the Security Council. While he agreed that it was regrettable to have to resort to such a mechanism and not be in a position to fully justify resources at an early stage in a mission, that was the practical reality arising from the issues facing the Organization and the pace of activity in the Council.

28. Under normal circumstances, he might have agreed that there had been more than adequate time to prepare a full budget for UNMIT. However, over the last few months, a whole series of peacekeeping-related requirements had been presented; he mentioned, in particular, the diversion of managerial effort with regard to reforming the United Nations Interim Force in Lebanon (UNIFIL); additional work with regard to the United Nations Mission in the Sudan (UNMIS); revised estimates, out of cycle, for the United Nations Operation in Côte d'Ivoire (UNOCI); a new budget for the United Nations Operation in Burundi (ONUB); a revised budget for the United Nations Mission in Ethiopia and Eritrea (UNMEE); and start-up requirements for UNIFIL. That additional workload had taken its toll in terms of what could be produced when and in what level of detail.

29. Resource requests would continue to be fully justified in the context of the budgets submitted. However, it was simply not possible, at the current time, to replace requests for commitment authority with full budgets. Such requests were the only way of ensuring that urgent missions received adequate resources in a timely manner. He would appreciate more understanding from delegations in that regard.

30. The ACABQ recommendation that the Assembly should approve assessment of 50 per cent of the amount approved for commitment did not make much sense to him. Money had been spent on UNMIT since August at a higher level. Just two weeks earlier, he had informed the Committee that the financial situation relating to peacekeeping operations was not good and that there would be no payments to troop contributors in December. A recommendation that assessment levels should be lower than commitment authority levels would simply exacerbate the cash flow situation and hamper the Mission's implementation. That was particularly true of UNMIT, which had a very high proportion of operational costs, but a very low proportion of troop costs and, therefore, limited scope for flexibility in terms of budget and cash flow management. Delaying reimbursements to troop contributors would not remedy the cash flow shortfall in that case. Lastly, even if the assessment level was approved in November and assessment letters were sent out in December, the bulk of the funds would not

be received until April at the earliest. It did not make sense to spend money first and receive it later. The Mission was relying too heavily on reserves. For that reason alone, he strongly recommended that Member States should look very carefully at the recommendation relating to assessment levels for UNMIT.

Other matters

31. **Mr. Michel** (Under-Secretary-General for Legal Affairs, the Legal Counsel) recalled that, at the Committee's 18th meeting, the Russian Federation had requested the Office of Legal Affairs to provide written answers to a number of questions pertaining to the waivers of immunity from legal process executed by the Secretary-General with regard to a former Inspector of the Joint Inspection Unit (JIU) and the former Chairman of ACABQ. The Secretary of the Committee had asked the Office of Legal Affairs, on behalf of the Bureau, to respond to the request for written answers.

32. The questions posed had been discussed in detail, with Office of Legal Affairs representatives during informal consultations of the Committee. An Office of Legal Affairs non-paper containing answers to the questions posed by Member States, including the Russian Federation, had been distributed in that context. The comments and observations being made at the current meeting were in response to the Bureau's request.

33. The Legal Counsel's long-standing and uncontested practice had been to provide written answers only to questions posed by the deliberative organs of the United Nations, not to those posed by individual Member States. He strongly believed that that practice should continue, and his current responses were without prejudice to that position of principle. Thus, he was replying because he had been invited to do so by the Bureau of the Committee.

34. Requests for waivers of immunity were addressed by the Secretary-General and the Legal Counsel on a case-by-case basis, with utmost seriousness and thoroughness. The basic documents regulating the scope of the privileges and immunities of officials of the Organization were the Charter of the United Nations (Article 105), the 1946 Convention on the Privileges and Immunities of the United Nations (articles V and VII), headquarters agreements with host States and, where applicable, the 1961 Vienna Convention on Diplomatic Relations. Certain Member States hosting United Nations offices had adopted national laws and regulations which could also be considered as a source of privileges and immunities for Organization officials.

35. The General Assembly, by its resolution 3188 (XXVIII) of 18 December 1973, had approved "the granting of the privileges and immunities referred to in articles V and VII of the Convention on the Privileges and Immunities of the United Nations to the members of the Joint Inspection Unit and the Chairman of the Advisory Committee on Administrative and Budgetary Questions". In particular, article V, section 20, of the 1946 Convention stipulated that "[p]rivileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations". Furthermore, article V, section 21, provided that "[t]he United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations, and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned.

36. No contracting party had made any reservations to those provisions, which constituted legally binding obligations on the international plane and were customary norms of public international law. Those provisions unequivocally gave the Secretary-General sole, pivotal and discretionary authority and responsibility to waive the immunity of any official in any case. The Secretary-General also had sole, pivotal and discretionary authority and responsibility to decide whether such immunity would impede the course of justice and could be waived without prejudice to the interests of the United Nations in any particular case. The 1946 Convention did not give the Secretary-General a legally binding obligation to consult with any authority in taking decisions relating to waivers of immunity.

37. In its advisory opinion of 29 April 1999 on the *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights,* the International Court of Justice had recognized that "the Secretary-General, as the chief

administrative officer of the Organization, has the primary responsibility to safeguard the interests of the Organization; to that end, it is up to him to assess whether its agents acted within the scope of their functions and, where he so concludes, to protect these agents, including experts on mission, by asserting their immunity" (para. 60).

38. By its resolution 56/280 of 27 March 2002, the General Assembly had adopted the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission, which had been promulgated in Secretary-General's bulletin ST/SGB/2002/9 of 18 June 2002. Regulation 1 (e) provided that "[t]he privileges and immunities enjoyed by the United Nations by virtue of Article 105 of its Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to those who are covered by them to fail to observe the laws and police regulations of the State in which they are located; nor do they furnish an excuse for non-performance of their private obligations. In any case where an issue arises regarding the application of these privileges and immunities, an official or an expert on mission shall immediately report the matter to the Secretary-General, who alone may decide whether such privileges and immunities exist and whether they shall be waived, in accordance with the relevant instruments. The Secretary-General should inform and may take into account the views of the legislative bodies that appointed the officials or experts on mission".

39. Consistent with the 1946 Convention, those provisions recognized the Secretary-General's right and duty to alone decide whether privileges and immunities existed and whether they should be waived. The last sentence of regulation 1 (e) could not be interpreted to either limit or expand that discretionary authority of the Secretary-General to mean that he "must" inform or "shall" take into account the views of the legislative bodies concerned in considering those matters. Nor did that sentence unequivocally indicate whether the legislative bodies concerned should be informed prior to, in the course of, or following a decision concerning a waiver of immunity. Interpreting that sentence to mean that the Secretary-General "must" inform and "shall" take into account the views of the legislative bodies concerned "prior to" his decision in those matters was clearly at variance with the obligations of States parties and the rights, duties and responsibilities of the Secretary-General under the 1946 Convention. In accordance with the letter and spirit of the 1969 Vienna Convention on the Law of Treaties, it would be inappropriate and legally incorrect for the General Assembly to adopt any measure which might impose additional obligations or somehow affect the existing obligations of the parties and the Secretary-General under the 1946 Convention. In accordance with the principle of *pacta sunt servanda* set out in article 26 of the 1969 Vienna Convention, "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith".

40. Moreover, in some cases, the nature of the investigation made it appear inconceivable, impracticable and even legally questionable for the Secretary-General to inform the legislative bodies concerned, at the preliminary stage of a criminal investigation, of a request to waive immunity and of his decision thereon; such matters involving the criminal law and procedures of a Member State were usually handled on a strictly confidential basis. Regulation 1 (e) should be read in conjunction with regulation 2 (j), which stipulated that "[o]fficials and experts on mission must comply with local laws and honour their private legal obligations, including, but not limited to, the obligation to honour orders of competent courts".

41. The question of waiving the immunity of a JIU Inspector was addressed in paragraphs 44 to 47 of the report of the Joint Inspection Unit for 2005 and programme of work for 2006 (A/61/34). The Secretary-General had granted a waiver on 7 November 2005, following a request by the competent Swiss authorities. The reasons for the waiver were grave allegations of a criminal nature which were being investigated by the Swiss law enforcement authorities. In view of the extreme seriousness and sensitivity of those allegations, the request had been conveyed to the United Nations on a strictly confidential basis. On 3 March 2006, the Legal Counsel had addressed a confidential communication to the President of JIU requesting the latter to transmit to the Inspector concerned a confidential letter explaining, on behalf of the Secretary-General, the reasons why the decision to waive had not been brought to the General Assembly's attention. The Office of Legal Affairs had never received a reaction to those communications.

42. The question of waiving the immunity of the former Chairman of ACABQ, Mr. Kuznetsov, was addressed in paragraph 56 of the report of the Office of Internal Oversight Services (A/61/264 (Part I)). The Secretary-General had granted a waiver on 1 September 2005 following a request by the United States Mission to the United Nations. The reasons for the waiver were serious United States federal criminal charges against Mr. Kuznetsov relating to money-laundering in violation of United States laws. On 9 September 2005, the Secretary-General had addressed a letter to the President of the General Assembly informing him of the United States request, the applicable legal provisions and the reasons for the waiver and indicating that, in accordance with the Organization's existing procedures in cases of arrest or detention of United Nations officials, the assistance of the competent United States authorities had been requested with a view to facilitating a visit by a United Nations representative to Mr. Kuznetsov. No reaction had ever been received to that letter. The Legal Counsel was unaware of any transfer to those authorities of information or materials concerning Mr. Kuznetsov prior to the waiver of his immunity.

43. He recalled that, on 10 December 1982, the Under-Secretary-General for Administration and Management had issued an administrative instruction (ST/AI/299) entitled "Reporting of arrest or detention of staff members, other agents of the United Nations and members of their families". Its main purpose had been to clarify the procedure for reporting to Headquarters instances of arrest or detention, so as to enable the United Nations to safeguard its legal rights in such situations and to discharge its obligations to the staff, other agents and family members concerned. The Organization had the right to visit the staff member or agent; to converse with him or her; to be apprised of the grounds for the arrest or detention, including the main facts and formal charges; to assist the staff member or agent in arranging legal counsel for his or her defence; and to appear in legal proceedings to defend any United Nations interest affected by the arrest or detention.

44. As to the determination of whether acts had been performed in an official or a private capacity, the Organization's position was that it was exclusively for the Secretary-General to determine the extent of the duties and functions of United Nations officials and of experts on mission for the United Nations.

45. With respect to the assistance of legal counsel, annex I to the administrative instruction made clear that "the United Nations is entitled to provide or retain an attorney or lawyer and to appear and participate in any legal proceeding, in so far as an interest of the United Nations is affected" and that "[i]f only a private interest of the individual is affected, the right of protection of the State of the nationality of the individual concerned shall be given priority over that of the United Nations. However, the United Nations may in either case assist the arrested or detained individual to retain his or her own attorney or lawyer, when so requested by the individual concerned".

46. Immediately following Mr. Kuznetsov's arrest on 1 September 2005, the Office of Legal Affairs had addressed a request to the United States Mission to facilitate a visit to him at his place of detention with a view to conversing with him about his well-being. The Assistant Secretary-General for Human Resources Management had twice visited Mr. Kuznetsov, on 8 September and 17 November 2005. No request had been received from him for assistance in retaining an attorney.

47. Bilateral contacts on the matter between the Legal Counsel and representatives of the Permanent Mission of the Russian Federation had taken place in the autumn of 2005 and on 17 October 2006.

48. Thus, in both cases, the Secretary-General had followed the normal practice of waiving immunity when he determined, according to the merits of a particular case, that immunity would impede the course of justice and that it could be waived without prejudice to the interests of the United Nations.

49. In many instances, the Secretary-General had decided that waivers would not be in the interests of the United Nations. Most of those cases had involved staff members of the Organization. Concerning experts on mission for the United Nations, on at least one occasion immunity had not been waived: the case concerning the Special Rapporteur of the Commission on Human Rights. In its advisory opinion in that case, the International Court of Justice had upheld the determination made by the Secretary-General.

50. Since the adoption of General Assembly resolution 3188 (XXVIII) of 18 December 1973, no requests to waive the immunity of United Nations officials other than Secretariat officials had been received except in the two cases under discussion.

51. **Mr. Kovalenko** (Russian Federation) thanked the Legal Counsel for his explanation. He reserved the right to put further questions at a later stage.

52. **Mr. Elji** (Syrian Arab Republic) said he appreciated the efforts of the Office of Legal Affairs to prepare advice for submission to the Secretary-General. However, advice from that Office, not being of the nature of an advisory opinion from a legal organ, could not be binding.

53. **Mr. Hillman** (United States of America) expressed appreciation for the detailed information given by the Legal Counsel. The question of the temporary suspension of the diplomatic immunity of a former JIU Inspector was a legitimate area of concern for the Office of Legal Affairs, and the matter was still before the Fifth Committee. However, the case involving the former Chairman of ACABQ was not currently before the Committee. Moreover, it was being dealt with in criminal proceedings in the court system, and to discuss it in a public setting such as the Committee might prejudice the outcome of those proceedings.

The meeting was suspended from 11.45 a.m. to 12.20 p.m.

Agenda item 117: Programme budget for the biennium 2006-2007 (*continued*)

Programme budget implications of draft resolution A/ES-10/L.19: Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory (A/C.5/61/12)

54. **Ms. Lock** (South Africa), speaking on behalf of the Group of 77 and China, said that in order to take action on the programme budget implications of draft resolution A/ES-10/L.19, the Committee must have all the requisite information. She wondered when the Advisory Committee would be in a position to report to the Fifth Committee.

55. **Mr. Saha** (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that the Secretariat was still compiling additional information. Since he did not know how soon that information would be received or how long the Advisory Committee's deliberations would take, he could not say exactly when the Advisory Committee would report to the Fifth Committee.

56. **Ms. Lock** (South Africa), speaking on behalf of the Group of 77 and China, said that on some previous occasions the Committee had had to make very rapid decisions on statements of programme budget implications. On the current occasion, the timing was especially tight because the General Assembly wished to take action on the draft resolution in the afternoon. If ACABQ was unable to submit a recommendation before then, another way forward might have to be sought.

57. **Ms. Pehrman** (Finland), speaking on behalf of the European Union, said that the Committee should follow its normal practice of seeking the views of the Advisory Committee before taking action on budget issues.

58. **Mr. Wallace** (United States of America) agreed. Putting pressure on the Advisory Committee to provide a response before it had thoroughly considered the matter in question would set an undesirable precedent. Moreover, taking action in the absence of such a response would represent a departure from the relevant rules of procedure.

59. **Mr. Saha** (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said he would bring the Committee's concerns to the attention of ACABQ.

60. **Ms. Lock** (South Africa), speaking on behalf of the Group of 77 and China, expressed full support for the Advisory Committee. She agreed that the practice of the Fifth Committee should be respected; that practice was to respond positively to all requests from the General Assembly for immediate action on statements of programme budget implications.

61. **The Chairman** suggested that the Committee should discuss the matter informally and reconvene in the afternoon to take the necessary action.

62. *It was so decided.*

The meeting rose at 12.30 p.m.